In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 72-1644

IMPACT DIE CASTING CORPORATION, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The court of appeals rendered no opinion. The Board's decision and order (Pet. App. A1-A39, A45-A47) are reported at 199 NLRB No. 32.

JURISDICTION

The judgment of the court of appeals was entered on April 17, 1973. The petition for a writ of certiorari was filed on June 7, 1973. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION INVOLVED

Whether substantial evidence supports the Board's finding that the company discharged an employee because of her union activities.

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*) are set forth at Pet. 3.

STATEMENT

1. The Board found that the Company violated Section 8(a)(1) of the Act by coercively questioning employees concerning their union sympathies and attendance at meetings, creating the impression that their union activities were under surveillance, threatening employees with reprisals for engaging in union activities, soliciting employees' withdrawals from the Union, suggesting that they form a shop union instead of affiliating with an established union, and directing employees not to wear union buttons. The Board also found that the Company violated Section 8(a)(3) and (1) of the Act by discharging Mildred Boyce because of her union activities. (Pet. App. A29, A33).

The evidence relating to the discharge of Boyce—the sole issue discussed in the petition[1]—is detailed below.

In August 1968, the Company—which casts aluminum and zinc dies—hired Boyce as a trim press operator, at a wage of $1.60 an hour. A few months later she was transferred to the booster cup machine and raised to $1.80 an hour. When terminated on November 8, 1971, she was a mill and lathe operator, earning $2.30 an hour. (Pet. App. A2, A15-A16; A. 85-86.)[2]

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[1] Petitioner has indicated (Pet. 12) that it would also contest the Section 8(a)(1) findings should the petition be granted.

[2] "A." refers to the appendix to the briefs in the court below. "Tr." refers to the transcript of the proceedings before the trial examiner and "G.C.Exh." to the exhibits introduced by the General Counsel in that proceeding.

On August 24, 1971, Boyce telephoned John Grady, a representative of the International Molders and Allied Workers of North America, AFL-CIO, to ask him what employees "had to do to have * * * or join a [u]nion" (Pet. App. A3; A. 59, 87-88). The next day she telephoned him to report that a group of the Company's employees was ready to meet with him on August 28 (Pet. App. A3; A. 59, 88). After the meeting, Boyce campaigned for the Union, distributing the cards and literature which Grady had given her, and inviting employees to her home to sign authorization cards (Pet. App. A3; A. 88-91).

On August 31, Plant Superintendent Caquelin came to Boyce's work area, showed her an unsigned authorization card, and asked her if she "knew anything about it, and [if she was] involved with this union stuff." Boyce answered "no." (Pet. App. A3; A. 91.) Later that day Company President Becker asked Boyce if she was still interested in a die casting job. When she said "no," he asked if she was "involved" in union activity and Boyce again denied that she was (Pet. App. A3-A4; A. 91-92). The "next day or so" Caquelin requested Boyce to come to his office where he told her that he knew she was holding some authorization cards and that she was engaging in union activity (Pet. App. A4; A. 92-93). Caquelin asked Boyce to "hold the cards" and not turn them over to the Union. Boyce replied that she could not do so without the permission of those who had signed the cards. After work Boyce reported Caquelin's request to card signers, none of whom wanted their cards withheld. (Pet. App. A4; A. 93.) A "couple of days later," Becker also told Boyce that he "wanted to have the cards held, in fact, to throw them in the pot and burn them,

to get the union off his back". Later in the day, Caquelin told Boyce that he knew the identities of the employees who had attended the first meeting with the Union and that he knew where the meeting had been held. Caquelin offered to "draw up a contract and keep the people from harassment or termination if they would keep their cards from being [turned in] to the International." (Pet. App. A4-A5; A. 94, 96-97.)

At the end of August, in a management meeting, President Becker characterized Boyce as a "troublemaker and union organizer" and stated that the Company would have "to get rid of" her (Pet. App. A17; A. 124-125). Plant Superintendent Caquelin agreed with Becker (Pet. App. A17; A. 125). A couple of weeks later Caquelin commented to General Foreman Gibson, as he saw Boyce passing by, "You got to get rid of that fat ass. She is a troublemaker and an organizer, a union organizer" (Pet. App. A17; A. 125). Caqelin instructed Gibson to watch certain union activists, including Boyce, during breaks and lunch periods to "keep them from getting together and signing union cards and organizing" (Pet. App. A17; A. 125-126).

The Union's petition for an election was filed on November 4 (Pet. App. A10). About 2:30 p.m. on November 8, Boyce was called to Caquelin's office (Pet. App. A18; A. 101). There, in the presence of Vice President Hebel, Caquelin told Boyce that she was being discharged for falsifying an insurance claim (Pet. App. A18; A. 80-81, 101-102). Boyce had filed a claim for medical expenses incurred in connection with an injury to her three-year old son (Pet. App. A20; A. 103-105). When Boyce asked Caquelin what he meant by falsifying a claim, Hebel told her that "there was a question [on the claim form] as to whether or not any other application

or claim had been made, and she had stated no" (Pet. App. A18; A. 80, 102). In fact, eight days after Mrs. Boyce filed her claim, her husband, who was enrolled in another group insurance program through his employer, had also filed an insurance claim seeking reimbursement for the child's medical expenses (Pet. App. A20; A. 32; G.C. Exhs. 2, 7, 17(k); Tr.210-211). When Boyce asked, "Do I get some sort of paper to show I was terminated," Caquelin said she would not and told her to get her personal belongings and to leave at once (Pet. App. A18; A. 101, 80).

2. The Trial Examiner, whom the Board upheld, concluded that the Company "would not have terminated Mrs. Boyce * * * but for the fact that she was the prime mover, if not the very embodiment, of the Union drive which [the Company] admittedly opposed with all the vigor at its command" (Pet. App. A28). The Examiner concluded that "the discharge was, in substantial and controlling part, motivated by union animus, in violation of Section 8(a)(3) and (1) of the Act" (Pet. App. A33). He recommended, *inter alia,* that she be reinstated with backpay (Pet. App. A36).

The court of appeals sustained all of the Board's unfair labor practice findings, including those with respect to Mrs. Boyce, and enforced its order in full (Pet. App. A48-A49).

ARGUMENT

The issue stated in the petition (Pet. 2)—whether a discharge of a union adherent "which is primarily and effectively motivated by legitimate business considerations" violates the Act where "the employer was motivated 'at least in part' by anti-union animus"—is not presented on this record. The Board, adopting the

Trial Examiner's findings, found that "Boyce's union role was * * * [the] significant and controlling determinant in [the Company's] decision to discharge her" (Pet. App. A30), and that the alleged legitimate business considerations "were pretexts to cloak the true ground for the discharge" (Pet. App. 33).[3]

The petition, therefore, presents only the issue whether substantial evidence exists to support the Board's findings. Such an issue does not warrant further review. *Universal Camera Corp.* v. *National Labor Relations Board,* 340 U.S. 474, 490-491. In any event, as shown in the Statement (pp. 2-5), the Board's findings are amply supported by the record.

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[3] Petitioner's reliance on the Trial Examiner's statement that "In any event, it is clear that Boyce 'was discharged at least in part because of Union activity'" (citation omitted) (Pet. App. A28) is misplaced. That statement must be read in the light of his ultimate conclusions that the asserted grounds for discharge were pretextual and that Boyce would not have been discharged "but for the fact that she was the prime mover * * * of the Union drive * * *" (Pet. App. A28).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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JULY 1973.

[0031-1973-07]